



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Chapter I, Subchapter N**

### **46 CFR Parts 10, 11, 15, and 107**

**[Docket Number USCG-2020-0049]**

### **Guidance Documents: Determining Whether a Floating OCS Facility is a Vessel or Non-Vessel; Oversight and Manning Requirements**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notification of availability of policy.

**SUMMARY:** The Coast Guard is issuing policies that will guide Officers In Charge, Marine Inspection (OCMIs) in determining if a Floating Outer Continental Shelf Facility (FOF) is a vessel or a non-vessel. As a result of these changes non-vessel FOFs will no longer receive a Certificate of Inspection (CG Form 841), and personnel serving on these FOFs will no longer be required to hold Merchant Mariner Credentials. In association with these changes, the Coast Guard is canceling USCG District 8 Policy Letter 08-2001, *Licensing Requirements for Personnel on Non-Self Propelled Floating OCS Facilities*.

**DATES:** CG-OES Policy Letter 01-22, Determination of Whether a Floating Outer Continental Shelf Facility (FOF) is a Vessel, and CG-MMC Policy Letter 01-22, Merchant Mariner Credential Endorsements for Service on Floating Outer Continental Shelf (OCS) Facilities were issued February 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Lieutenant Commander Matthew Meacham, the U.S. Coast Guard Office of Operating and Environmental Standards, Vessel and Facility Operating Standards Division (CG-

OES-2) at 202-372-1410, or Mr. Luke Harden, the U.S. Coast Guard Office of Merchant Mariner Credentialing (CG-MMC-2) at 202-372-1206.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Following recent court rulings related to Outer Continental Shelf (OCS) activities the Coast Guard initiated a review of the agency's Floating OCS Facility (FOF) policies, procedures, and regulations. As part of this review, the Coast Guard tasked the National Offshore Safety Advisory Committee (NOSAC) with conducting a detailed review of Coast Guard OCS regulations. In March 2018 NOSAC provided the USCG with a final report containing recommendations on Coast Guard regulations applicable to OCS units operating on the U.S. OCS.<sup>1</sup> An OCS unit is any domestic or foreign OCS facility, vessel, rig, platform, or other vehicle.<sup>2</sup> One type of OCS unit is a "floating OCS facility," or FOF. FOFs are buoyant facilities that are securely and substantially moored, such that they cannot be moved without special effort.<sup>3</sup> FOFs come in many different structural configurations with varying degrees of sea keeping capabilities. They can be either vessels or non-vessels. Based on NOSAC's recommendations and its own internal review, the Coast Guard determined that it needed to clarify what Coast Guard regulations are applicable to FOFs that are not vessels.

Specifically the Coast Guard determined that it needed to clarify: (1) which FOFs are vessels and which FOF are non-vessel FOFs and (2) that non-vessel FOFs are not subject to vessel-manning requirements.

### **II. Legal Authority**

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<sup>1</sup> National Offshore Safety Advisory Committee. (2018). *Final Report for Production Industry*. Available at <https://homeport.uscg.mil/Lists/Content/DispForm.aspx?ID=35215&Source=/Lists/Content/DispForm.aspx?ID=35215>.

<sup>2</sup> 33 CFR 140.10 (definition of "unit").

<sup>3</sup> 33 CFR 140.10 (definition of "floating OCS facility").

The Coast Guard has broad authority to regulate FOFs under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, and its implementing regulations at 33 CFR chapter I, subchapter N. FOFs that qualify as seagoing motor vessels may also be regulated by the Coast Guard under title 46 of the United States Code and associated implementing regulations. This document is issued in accordance with 5 U.S.C. 552(a)(1)(D) and 5 U.S.C. 553(b)(A).

### **III. Policies**

#### ***1. When is an FOF a vessel?***

The Coast Guard is announcing the availability of: (1) CG-OES Policy Letter 01-22, *Determination of Whether a Floating Outer Continental Shelf Facility (FOF) is a Vessel*. CG-OES 01-22 outlines the procedures for Coast Guard OCMI's to follow in order to determine if a particular FOF is a vessel or a non-vessel.

The term “vessel” is defined in the United States Code at 1 U.S.C. 3. As defined, the term captures every form of watercraft and artificial contrivance used, or capable of being used, as a means of transportation on water. In *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013), the Supreme Court of the United States held that to be a vessel under 1 U.S.C. 3, a structure’s physical “characteristics and activities” need to be such that a “reasonable observer” would conclude that the structure was designed to a practical degree to carry “people or things” on the water. Rather than relying upon any single structural characteristic to reach its decision, the Court instead focused on the phrase “capable of being used as a means of transport[.]” Citing *Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005), the Court emphasized that for a structure to be considered “capable of being used for transport” it has to have a practical possibility of transporting people or goods over the water, not just be theoretically capable of doing so. This holistic test requires the fact finder to determine if the characteristics and activities of the structure

would convince a reasonable observer that the watercraft is designed to a practical degree to carry people or things on the water.

In accordance with *Lozman*, to determine if an FOF is a vessel or a non-vessel, OCMIs must decide whether a particular FOF was designed to a practical degree for carrying people or things over the water. Due to the many existing configurations of FOFs and ever-increasing technology advancement in the energy exploration field, it is not possible to make a blanket determination for all FOFs. Determinations need to be conducted on a case-by-case basis. The policy letter directs OCMIs to look at the following factors when making determinations.

1. Whether the FOF has a mode of self-propulsion, steering mechanisms, navigation equipment, dynamic positioning equipment, or operating station.
2. Whether the FOF has a traditional hull.
3. Whether the FOF was meant to be towed into place and “securely and substantially” moored to the seabed for a long period of time.
4. Whether it takes substantial monetary investment and a long lead-time to move the FOF from its anchored position or is capable of emergency disconnect allowing the FOF to float free or be underway.

The policy letter makes clear that the above list is not exhaustive and the existence of any one of these factors does not necessarily mean that an FOF is a vessel. The OCMI must holistically consider all of the facts, including taking into account the physical characteristics and activities of the FOF, to determine if it is designed to a practical degree for carrying people or things over water.

In addition to being available along with other Coast Guard guidance documents at <https://www.uscg.mil/guidance>, a complete copy of CG-OES Policy Letter 01-22, *Determination of Whether a Floating Outer Continental Shelf Facility (FOF) is a Vessel* is available in the docket at <https://www.regulations.gov> and also at

<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/office-oes/>.

## ***2. What documentation will the Coast Guard provide an Owner/Operator of a Non-Vessel FOF?***

The Coast Guard will no longer issue a Certificate of Inspection (USCG Form 841) to FOFs that are not vessels. Instead, OCMI's will issue non-vessel FOFs a Floating OCS Facility Determination Letter and a Floating OCS Facility Certificate of Inspection (FOF COI). The Facility Determination Letter will identify whether or not the unit is a vessel. The FOF COI letter will identify expectations the Coast Guard has for the inspection and maintenance of the particular non-vessel FOF, based on existing Coast Guard regulations. See the enclosures to CG-OES Policy Letter 01-22 for a sample Floating OCS Facility Determination Letter and a sample Floating OCS Facility Certificate of Inspection.

This change is being made to account for the fact that non-vessel FOFs are not subject to inspection under 46 U.S.C. 3301 and thus do not require a certificate of inspection under 33 U.S.C. 3309. The use of FOF Determination Letters and FOF COI Letters in place of the USCG Form 841 is in accordance with existing Coast Guard regulations. Section 143.120 of 33 CFR requires an OCMI to issue a "certificate of inspection" but does not require the use of USCG Form 841. FOFs that are U.S. documented vessels will be issued a USCG Form 841.

## ***3. What are the manning requirements for vessel and non-vessel FOFs?***

The OCMI's authority to place manning requirements on an FOF depends on whether the unit is a vessel.

*Vessel FOFs.* For FOFs that are U.S. documented vessels, consistent with current practice, their Coast Guard Certificate of Inspection (COI) (USCG Form 841) will contain the required manning. An OCMI may require manning of vessel FOFs under

46 U.S.C. 3301 and 3306 and regulations promulgated in 46 CFR, chapter I, subchapter B, part 15 – Manning Requirements.

*Non-vessel FOFs.* OCSLA does not prescribe particular manning requirements with the exception of 43 U.S.C. 1356, which imposes U.S. citizenship requirements to units that conduct activities under OCSLA jurisdiction. For FOFs that are not vessels, OCMI manning authority is limited to the regulations promulgated under 33 CFR chapter I, subchapter N – Outer Continental Shelf Activities, which is limited to a Person In Charge.

In association with this clarification of requirements, the Coast Guard is canceling: USCG District 8 Policy Letter 08-2001, *Licensing Requirements for personnel on Non-Self-Propelled Floating OCS Facilities*.

#### ***4. Credentialing of personnel serving on FOFs***

The Coast Guard is announcing the availability of CG-MMC Policy Letter 01-22, *Merchant Mariner Credential Endorsements for Service on Floating Outer continental Shelf (OCS) Facilities*. This letter cancels Eighth District (D8) Policy Letter 08-2001, *Licensing Requirements for Personnel on Non-Self Propelled Floating Outer Continental Shelf (OCS) Facilities*, and outlines the new credentialing policies concerning personnel serving on FOFs.<sup>4</sup>

Effective 30 days from the issuance of CG-MMC Policy Letter 01-22, the Coast Guard will no longer issue original MMC officer endorsements that are restricted to service on specific types of FOFs, referred to as Floating Offshore Installations (FOI) in endorsements. This applies to the following endorsements:

- Offshore Installation Manager (Active Ballast FOI);
- Offshore Installation Manager (Passive Ballast FOI);
- Barge Supervisor (Active Ballast FOI);
- Barge Supervisor (Passive Ballast FOI);

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<sup>4</sup> D8 Policy Letter 08-2001 is available at <https://www.dco.uscg.mil/Portals/9/OCSNCOE/References/Policy-Letters/D8/D8-PL-08-2001.pdf?ver=XemXFtSnbUCVYl0M1brmIw%3d%3d>.

- Ballast Control Operator (Active Ballast FOI); and
- Ballast Control Operator (Passive Ballast FOI).

The Coast Guard will continue to issue the following original endorsements to mariners meeting applicable service and training requirements specified in 46 CFR part 11:

- Offshore Installation Manager (OIM) [46 CFR 11.470]:
  - OIM Unrestricted;
  - OIM Surface Units on Location;
  - OIM Surface Units Underway;
  - OIM Bottom Bearing Units on Location; and
  - OIM Bottom Bearing Units Underway;
- Barge Supervisor (without restriction to specific MODU or FOF types) [46 CFR 11.472]; and
- Ballast Control Operator (without restriction to specific MODU or FOF types) [46 CFR 11.474].

There are currently 47 mariners who hold one or more of the endorsements listed above. Considering that some FOFs may be found to be vessels, not allowing these endorsements could result in taking something of present or potential value from the mariners who hold them.<sup>5</sup> Accordingly, the Coast Guard will continue to renew the endorsements listed above.

Mariners who served aboard FOFs that have been determined to not be vessels will need to renew their MMCs under provisions in 46 CFR 10.227(e) that are applicable to mariners who do not have evidence of at least one year of service during the past five years. Mariners who served on FOFs found to be vessels may use their service to renew their endorsements under 46 CFR 10.227(e)(1).

The Coast Guard can only credit seagoing service for qualifying for MMC endorsements if it was obtained on a vessel.<sup>6</sup> Accordingly, service on FOFs that are not

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<sup>5</sup> The Coast Guard does not anticipate any currently operating FOFs will be determined to be a vessel. But, modifications to a currently operating unit or a new unit that comes on line in the future could be classified as a vessel.

<sup>6</sup> 46 CFR 10.107 (definition of “seagoing service”).

vessels will not be accepted as service for qualifying for an original or raise of grade of an MMC endorsement. Service on FOFs that are not vessels may only be accepted if it is found to be "closely related service" as specified in 46 CFR 10.232(g) to renew an MMC.

The Coast Guard will discontinue approving stability and ballast control courses and courses that substitute for a Coast Guard administered examination that are valid only for the FOF endorsements noted in the second paragraph of section four above. These approved courses will not be renewed upon expiration. If a stability course or in lieu of examination course is approved for both an endorsement being discontinued and one or more of the endorsements described in 46 CFR 11.470, 11.472, or 11.474 the course approval will be amended to omit meeting requirements for the FOF endorsements noted above.

In addition to being available along with other Coast Guard guidance documents at <https://www.uscg.mil/guidance>, a complete copy of CG-MMC Policy Letter 01-22, *Merchant Mariner Credential Endorsements for Service on Floating Outer Continental Shelf (OCS) Facilities*, is available in the docket at <https://www.regulations.gov> and also at <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Merchant-Mariner-Credentialing/CG-MMC-2/CG-MMC-2-New-Policies/>.

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